

**LEMON GROVE CITY COUNCIL  
AGENDA ITEM SUMMARY**

Item No. 4  
Mtg. Date June 7, 2016  
Dept. City Manager's Office

Item Title: **Agreement between AdminSure Inc. and City of Lemon Grove for Workers' Compensation Third-Party Administration and Claims Review**

Staff Contact: [Corinne Russell, Human Resources Manager ]

**Recommendation:**

Adopt the resolution (**Attachment B**) approving an Agreement between AdminSure Inc. and the City of Lemon Grove for Workers' Compensation Third-Party Administration (TPA) and Claims Review.]

**Item Summary:**

[Staff recommends that the City Council approve a twelve (12) month professional services agreement from August 1, 2016 to July 31, 2017 with four [additional](#) one-year renewal options with AdminSure Inc. in an amount of \$5,160 in the first year for Workers' Compensation TPA and Claims Review services for the City of Lemon Grove. The staff report (**Attachment A**) provides a description and analysis of the agreement.]

**Fiscal Impact:**

[The cost of the annual administrative fee is \$5,160. This is an annual savings of \$19,840 when compared to the existing Tri-Star Risk Management contract through SANDPIPA.]

**Environmental Review:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Not subject to review        | <input type="checkbox"/> Negative Declaration           |
| <input type="checkbox"/> Categorical Exemption, Section [      ] | <input type="checkbox"/> Mitigated Negative Declaration |

**Public Information:**

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> None                                | <input checked="" type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting          |   |

**Attachments:**

- A. Staff Report
- B. Resolution



## LEMON GROVE [CITY COUNCIL] STAFF REPORT

Item No.   4  

Mtg. Date  June 7, 2016 

Item Title: **[Agreement between AdminSure Inc. and City of Lemon Grove for Workers' Compensation Third-Party Administration and Claims Review ]**

Staff Contact: **[Corinne Russell, Human Resources Manager]**

### Discussion:

In August 1995, City Council authorized the City to join the San Diego Pooled Insurance Program Authority (SANDPIPA) member group for the services for City-wide Workers' Compensation Claims Administration. SANDPIPA contracted with Tri-Star Risk Management (Tri-Star) for Workers' Compensation Services. Since 1995, SANDPIPA amended the agreement with Tri-Star to continue to provide Workers' Compensation Services to SANDPIPA cities. SANDPIPA is dissolving effective July 1, 2016 and the SANDPIPA Workers' Compensation Services contract with Tri-Star Risk Management will expire on July 31, 2016.

On February 3, 2016, the City along with three other San Diego Cities (cities of Encinitas, National City and Vista) issued a request for proposal to perform Workers' Compensation Third-Party Administration/Claims Review Services (TPA). Nine proposals, including the City's current TPA Tri-Star, were received by the cities from firms with varying levels of experience, expertise and pricing. Based on the RFP evaluation selection criteria, four vendors, including Tri-Star, were invited to make a formal presentation on April 20, 2016 to the selection panel.

The panel evaluated four vendors on the basis of the selection criteria contained in the RFP. Criteria included, but was not limited to: response to RFP and scope of work; other city-clients with similar complex claims (including public safety); pricing; TPA's responsiveness and commitment to customer service, communication with employees/staff; and TPA staffing levels. Of the four TPA's interviewed, the initial selection panel recommended two finalists. In May, further clarification was sought from the two finalists on issues such as bill review fees, nurse case manager fees, utilization review fees, staffing levels, and specific customer service requirements. In addition, the Cities performed reference checks on the two finalists, including the TPA's current and past clients to determine if each TPA was consistently able to meet customer satisfaction and responsiveness for employees/staff, professionalism, and overall claim administration services.

Based on the information provided in the RFP, oral presentations, pricing details, customer services levels and reference checks, AdminSure Inc. was the unanimous choice by the selection panel. Specifically, AdminSure Inc. was chosen based on competitive prices, excellent customer service, the unique tailored approach to each City and customer satisfaction. Staff is therefore recommending to the Lemon Grove City Council that the City enter into a contract with AdminSure Inc. for TPA services. Although the RFP was jointly issued, each City is contracting with AdminSure Inc. independently.

]

# Attachment A

## Conclusion:

Staff recommends that the City Council adopt the resolution (**Attachment B**) approving an agreement (**Attachment B – Exhibit 1**) with AdminSure Inc. and the City of Lemon Grove for Workers' Compensation Third-Party Administration (TPA) and Claims Review. ]

## Attachment B

### RESOLUTION NO. [2016-\_\_\_\_]

#### RESOLUTION OF THE [CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA] [ADOPTING AN AGREEMENT WITH ADMINSURE INC. FOR WORKERS' COMPENSATION THIRD-PARTY ADMINISTRATION AND CLAIMS REVIEW]

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[**WHEREAS**, the City currently has a contract with Tri-Star Risk Management through SANDPIPA for Workers' Compensation Third Party Administration; and

**WHEREAS**, SANDPIPA is dissolving and the Tri-Star Risk Management contract will expire on July 31, 2016; and

**WHEREAS**, staff solicited and received nine proposals for workers' compensation third-party administration; and

**WHEREAS**, after reviewing each proposal staff interviewed 4 firms; and

**WHEREAS**, staff believes that AdminSure Inc. provides a special and unique service package of personnel and experience that can manage all workers' compensation claims for the City; and ]

[**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Lemon Grove, California resolves as follows:

1. Approves an agreement (**Exhibit 1**) with AdminSure Inc. for Workers' Compensation Third-Party Administration; and
2. Establishes an initial term ending on July 31, 2017, with the option to execute four one-year extensions; and
3. Authorizes the City Manager or designee to execute and manage all agreement documents.]

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# Attachment B – Exhibit 1

## AGREEMENT BY AND BETWEEN THE CITY OF LEMON GROVE AND ADMINSURE, INC.

THIS AGREEMENT is entered into on this 1st day of August 2016, by and between the CITY OF LEMON GROVE, a municipal corporation (the “CITY”), and AdminSure, Inc., a Third Party Administrator of Worker’s Compensation Programs (the “CONTRACTOR”).

### RECITALS

WHEREAS, the CITY desires to employ a CONTRACTOR to provide comprehensive Workers’ Compensation claims administration services in a manner consistent with the claims administration standards and reporting and reimbursement procedures of the CITY’S excess Workers’ Compensation carrier.

WHEREAS, the CITY has determined that the CONTRACTOR is a Third Party Administrator of Worker’s Compensation Programs and is qualified by experience and ability to perform the services desired by the CITY, and the CONTRACTOR is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONTRACTOR.** The CITY agrees to engage the CONTRACTOR to perform Third Party Workers’ Compensation Claims Administration and the CONTRACTOR agrees to perform the services set forth here in accordance with all terms and conditions contained herein.

The CONTRACTOR represents that all services shall be performed directly by the CONTRACTOR or under direct supervision of the CONTRACTOR.

2. **EFFECTIVE DATE AND LENGTH OF AGREEMENT.** This Agreement will become effective on August 1, 2016. The duration of this Agreement is for the period of August 1, 2016 through July 31, 2017. This Agreement may be extended by mutual agreement upon the same terms and conditions for an additional four (4) years. The Parties may exercise up to four one-year extensions. Any extension of this Agreement must be approved in writing by the City Manager.

3. **SCOPE OF SERVICES.** The CONTRACTOR will perform Third Party Workers’ Compensation Claims Administration services as set forth in the attached Exhibit “B”

The CONTRACTOR shall be responsible for all research and reviews related to the work and shall not rely on personnel of the CITY for such services, except as authorized in advance by the CITY. The CONTRACTOR shall appear at meetings as mutually agreed to keep staff advised of the progress on the Project.

The CITY may unilaterally, or upon request from the CONTRACTOR, from time to time reduce or increase the Scope of Services to be performed by the CONTRACTOR under this Agreement. Upon doing so, the CITY and the CONTRACTOR agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services.

4. **PROJECT COORDINATION AND SUPERVISION.** **Corinne Russell, Human Resources Manager** hereby is designated as the Project Coordinator for the CITY and will monitor the progress and

# Attachment B – Exhibit 1

execution of this Agreement. The CONTRACTOR shall assign a single Project Director to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONTRACTOR. Alithia Vergas-Flores, Vice President/Director of Operations thereby is designated as the Project Director for the CONTRACTOR.

5. **COMPENSATION AND PAYMENT.** The compensation for the CONTRACTOR shall be based on monthly billings covering actual work performed. The total cost for all Worker's Compensation Claims Administration work described in Exhibit "A" shall not exceed \$26,620 for the five years. Monthly invoices will be processed for payment and remitted within thirty (30) days from receipt of invoice, provided that work is accomplished consistent with Exhibit "B", as determined by the CITY.

The CONTRACTOR shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred, and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY, and for furnishing of copies to the CITY, if requested.

6. **ACCEPTABILITY OF WORK.** The City shall decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the acceptable completion of this Agreement, and the amount of compensation due. In the event the CONTRACTOR and the City cannot agree to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the CONTRACTOR in this Agreement, the City or the CONTRACTOR shall give to the other written notice. Within ten (10) business days, the CONTRACTOR and the City shall each prepare a report which supports their position and file the same with the other party. The City shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance and/or the compensation payable to the CONTRACTOR.

7. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications, and other documents prepared by the CONTRACTOR for this Project, whether paper or electronic, shall become the property of the CITY for use with respect to this Project, and shall be turned over to the CITY upon completion of the Project, or any phase thereof, as contemplated by this Agreement.

Contemporaneously with the transfer of documents, the CONTRACTOR hereby assigns to the CITY, and CONTRACTOR thereby expressly waives and disclaims any copyright in, and the right to reproduce, all written material, drawings, plans, specifications, or other work prepared under this Agreement, except upon the CITY'S prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONTRACTOR shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONTRACTOR agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium, or method utilize the CONTRACTOR'S written work product for the CITY'S purposes, and the CONTRACTOR expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings, or specifications prepared by the CONTRACTOR shall relieve the CONTRACTOR from liability under Section 14, but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the



## Attachment B – Exhibit 1

documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of this project, unless otherwise mutually agreed.

8. **INDEPENDENT CONTRACTOR.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers with one another. Neither the CONTRACTOR nor the CONTRACTOR'S employees are employees of the CITY, and are not entitled to any of the rights, benefits, or privileges of the CITY'S employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONTRACTOR and the CONTRACTOR'S employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONTRACTOR and its employees. Neither this Agreement nor any interest herein may be assigned by the CONTRACTOR without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONTRACTOR from employing or hiring as many employees, or SUBCONTRACTORS, as the CONTRACTOR may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONTRACTOR with its SUBCONTRACTOR(S) shall require the SUBCONTRACTOR(S) to adhere to the applicable terms of this Agreement.

9. **CONTROL.** Neither the CITY nor its officers, agents, or employees shall have any control over the conduct of the CONTRACTOR or any of the CONTRACTOR'S employees, except as herein set forth, and the CONTRACTOR or the CONTRACTOR'S agents, servants, or employees are not in any manner agents, servants, or employees of the CITY, it being understood that the CONTRACTOR its agents, servants, and employees are as to the CITY wholly independent CONTRACTOR, and that the CONTRACTOR'S obligations to the CITY are solely such as are prescribed by this Agreement.

10. **COMPLIANCE WITH APPLICABLE LAW.** The CONTRACTOR, in the performance of the services to be provided herein, shall comply with all applicable state and federal statutes and regulations, and all applicable ordinances, rules, and regulations of the City of Lemon Grove, whether now in force or subsequently enacted. The CONTRACTOR and each of its SUBCONTRACTOR(S), shall obtain and maintain a current City of Lemon Grove business license prior to and during performance of any work pursuant to this Agreement.

11. **LICENSES, PERMITS, ETC.** The CONTRACTOR represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The CONTRACTOR represents and covenants that the CONTRACTOR shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONTRACTOR to practice its profession.

12. **STANDARD OF CARE.**

A. The CONTRACTOR, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONTRACTOR'S trade or profession currently practicing under similar conditions and in similar locations. The CONTRACTOR shall take all special precautions necessary to protect the CONTRACTOR'S employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

B. Unless disclosed in writing prior to the date of this Agreement, the CONTRACTOR warrants to the CITY that it is not now, nor has it for the five (5) years preceding, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONTRACTOR'S professional performance or the furnishing of materials or services relating thereto.

C. The CONTRACTOR is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONTRACTOR has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then

## Attachment B – Exhibit 1

within a commercially reasonable time. Accordingly, unless the CONTRACTOR has notified the CITY otherwise, the CONTRACTOR warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONTRACTOR to use due diligence under this sub-paragraph will render the CONTRACTOR liable to the CITY for any increased costs that result from the CITY'S later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

13. **NON-DISCRIMINATION PROVISIONS.** The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONTRACTOR will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

14. **CONFIDENTIAL INFORMATION.** The CITY may from time to time communicate to the CONTRACTOR certain confidential information to enable the CONTRACTOR to effectively perform the services to be provided herein. The CONTRACTOR shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONTRACTOR shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 14, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONTRACTOR, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONTRACTOR without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to the CONTRACTOR by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

The CONTRACTOR shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONTRACTOR shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONTRACTOR shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 14.

15. **INDEMNIFICATION AND HOLD HARMLESS.** The CONTRACTOR agrees to defend, indemnify and hold harmless the City of Lemon Grove, its officers, officials, agents, and employees, against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of the CONTRACTOR'S performance or other obligations under this Agreement; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers, or employees. CITY will cooperate reasonably in the defense of any action, and CONTRACTOR shall employ competent counsel, reasonably acceptable to the City Attorney.

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The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the term of this Agreement.

16. **WORKERS' COMPENSATION.** The CONTRACTOR shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar State or federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its officers, and employees from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description, including reasonable attorney's fees and defense costs presented, brought or recovered against the CITY or its officers, employees, or volunteers, for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONTRACTOR under this Agreement.

17. **INSURANCE.** The CONTRACTOR, at its sole cost and expense, shall purchase and maintain, and shall require its SUBCONTRACTOR(S), when applicable, to purchase and maintain throughout the term of this Agreement, the following checked insurance policies:

A. ☒ If checked, **Professional Liability Insurance** (errors and omissions) with minimum limits of \$1,000,000 per occurrence.

B. **Automobile Insurance** covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of \$1,000,000 combined single limit per accident. Such automobile insurance shall include owned, non-owned, and hired vehicles ("any auto"). The policy shall name the CITY and its officers, agents and employees as additional insureds, and a separate additional insured endorsement shall be provided.

C. **Commercial General Liability Insurance**, with minimum limits of either \$2,000,000 per occurrence and \$4,000,000 aggregate, or \$1,000,000 per occurrence and \$2,000,000 aggregate with a \$2,000,000 umbrella policy, covering all bodily injury and property damage arising out of its operations, work, or performance under this Agreement. The policy shall name the CITY and its officers, agents and employees as additional insureds, and a separate additional insured endorsement shall be provided. The general aggregate limit must apply solely to this "project" or "location". The "project" or "location" should be noted with specificity on an endorsement that shall be incorporated into the policy.

D. **Workers' Compensation Insurance** in an amount sufficient to meet statutory requirements covering all of CONTRACTOR'S employees and employers' liability insurance with limits of at least \$1,000,000 per accident. In addition, the policy shall be endorsed with a waiver of subrogation in favor of the City. Said endorsement shall be provided prior to commencement of work under this Agreement.

If CONTRACTOR has no employees subject to the California Workers' Compensation and Labor laws, CONTRACTOR shall execute a Declaration to that effect. Said Declaration shall be provided to CONTRACTOR by CITY.

E. Fidelity/Crime Bond, with a \$1,000,000 payable to the City with an approved corporate surety covering all officers and employees involved with the City's Claims handling.

F. The aforesaid policies shall constitute primary insurance as to the CITY, its officers, officials, employees, and volunteers, so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY of cancellation or material change.

G. If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CONTRACTOR shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement. In addition, the "retro" date must be on or before the date of this Agreement.

H. Insurance shall be written with only California admitted companies that hold a current policy holder's alphabetic and financial size category rating of not less than A:VII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the CITY'S Risk

# Attachment B – Exhibit 1

Manager. In the event coverage is provided by non-admitted “surplus lines” carriers, they must be included on the most recent California List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meet rating requirements.

I. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY’S Human Resources Manager. If the CONTRACTOR does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

J. All deductibles and self-insured retentions in excess of \$10,000 must be disclosed to and approved by the CITY.

18. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including attorneys’ fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorney’s fees incurred in the prosecution or defense of the action or suit shall not be considered in determining the amount of the judgment or award. Attorney’s fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorney’s fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney’s fees incurred by the prevailing party.

19. **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the “AAA”) before resorting to arbitration. The costs of mediation shall be borne equally by the parties. Any controversy or claim arising out of, or relating to, this Agreement, or breach thereof, which is not resolved by mediation, shall be settled by arbitration in San Diego, California, in accordance with the Commercial Arbitration Rules of the AAA then existing. Any award rendered shall be final and conclusive upon the parties, and a judgment thereon may be entered in any court having jurisdiction over the subject matter of the controversy. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the costs of its own experts, evidence and attorneys’ fees, except that the arbitrator may assess such expenses or any part thereof against a specified party as part of the arbitration award.

20. **TERMINATION.**

A. This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon 60-day’s written notice to the CONTRACTOR. During said 60-day period the CONTRACTOR shall perform all services in accordance with this Agreement.

B. This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement, misrepresentation by the CONTRACTOR in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

C. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONTRACTOR as provided for herein.

D. In the event of termination, all finished or unfinished Memoranda Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONTRACTOR, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, and less any damages caused the CITY by the CONTRACTOR’S breach, if any. Thereafter, ownership of said written material shall vest in the CITY all rights set forth in Section 7.

## Attachment B – Exhibit 1

E. The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONTRACTOR; (2) a reorganization of the CONTRACTOR for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONTRACTOR.

21. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

To CITY:           Corinne Russell  
                          Human Resources Manager  
                          3232 Main St  
                          Lemon Grove, Ca 91945

To CONTRACTOR:  
                          Alithia Vargas-Flores  
                          Vice President/Director of Operations  
                          AdminSure Inc.  
                          1470 S. Valley Vista Dr. Ste. 230  
                          Diamond Bar, Ca 91765

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

22. **CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.** During the term of this Agreement, the CONTRACTOR shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the City of Lemon Grove. The CONTRACTOR also agrees not to specify any product, treatment, process or material for the project in which the CONTRACTOR has a material financial interest, either direct or indirect, without first notifying the CITY of that fact. The CONTRACTOR shall at all times comply with the terms of the Political Reform Act.. The CONTRACTOR shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONTRACTOR has a financial interest as defined in Government Code Section 87103. The CONTRACTOR represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

☐ If checked, the CONTRACTOR shall comply with all of the reporting requirements of the Political Reform Act. Specifically, the CONTRACTOR shall file a Statement of Economic Interests with

## Attachment B – Exhibit 1

the City Clerk of the City of Lemon Grove in a timely manner on forms which the CONTRACTOR shall obtain from the City Clerk.

The CONTRACTOR shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Paragraph 22 by the CONTRACTOR.

23. **PREVAILING WAGES.** State prevailing wage rates may apply to work performed under this Agreement. State prevailing wages rates apply to all public works contracts as set forth in California Labor Code, including but not limited to, Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. CONTRACTOR is solely responsible to determine if State prevailing wage rates apply and, if applicable, pay such rates in accordance with all laws, ordinances, rules, and regulations.

24. **MISCELLANEOUS PROVISIONS.**

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state, or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes. To the extent any exhibits or schedules or provisions thereof conflict or are inconsistent with the terms and conditions contained in this Agreement, the terms and conditions of this Agreement shall control.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. *Audit.* If this Agreement exceeds ten-thousand dollars (\$10,000), the parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the Agreement, per Government Code Section 8546.7.

J. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

K. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

L. *Subcontractors or SubCONTRACTORS.* The City is engaging the services of the CONTRACTOR identified in this Agreement. The CONTRACTOR shall not subcontract any portion of the administration work, unless such subcontracting was part of the original proposal or is allowed by the City in writing. In the event any portion of the work under this Agreement is subcontracted, the subCONTRACTOR(s) shall be required to comply with and agree to, for the benefit of and in favor of the City, both the insurance provisions in Section 17 and the indemnification and hold harmless provision of Section 15 of this Agreement.

## Attachment B – Exhibit 1

M. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

### CITY OF LEMON GROVE

### ADMINSURE, INC.

By: \_\_\_\_\_  
Lydia Romero  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Jim Lough  
City Attorney

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Alycia Anthony*

\_\_\_\_\_  
*Corporate Secretary*

By: \_\_\_\_\_  
*(Name)*

\_\_\_\_\_  
*(Print)*

\_\_\_\_\_  
*(Title)*

# Attachment B – Exhibit 1

## ADMINSURE INC. – SCOPE OF SERVICES

Effective August 1, 2016

1. **PERIODIC MEETINGS:** The Contractor (AdminSure Inc.) shall meet with the City and staff periodically to:
  - A. Assist in developing internal procedures.
  - B. Provide orientation and training to personnel involved in the administration of the Program.
  - C. Discuss specific claims and general trends in the Program.
2. **ADVISORY SERVICES:** The Contractor shall provide the City information regarding the adoption, amendment or repeal of all Statutes, Rules and Regulations, et cetera, which may directly affect the Program.
3. **REQUIRED FORMS:** The Contractor shall provide the City with all forms required by the State in connection with the Program.
4. **COMPLIANCE WITH LAW:** The Contractor shall administer the Program in full compliance with all laws, rules and regulations governing Workers' Compensation and Self- Insurance.
5. **CLAIMS ADMINISTRATION:** The Contractor shall comply with all performance standards of the City's excess insurer. The Contractor shall also comply with the Contractor's Workers' Compensation Claims Administration Standards, but under no circumstances are they to be construed as having precedence over the performance standards of the City's excess insurer. The Contractor shall also have the authority and responsibility to provide claims administration services, which include:
  - A. Establishing an electronic claim file and computer database record upon receipt of an injury report.
  - B. Setting and updating reserves.
  - C. Initiating and maintaining contact with injured workers or their attorneys.
  - D. Arranging for investigation.
  - E. Determining compensability.
  - F. Preparing and issuing benefit notices, if applicable.
  - G. Arranging for medical treatment and medical services from clinics, facilities, pharmacies, hospitals, specialists, and other vendors as necessary.
  - H. Performing all utilization review services through MedReview; communicating decisions to approve, modify, delay or deny medical treatment in accordance with State law.



## Attachment B – Exhibit 1

- I. Monitoring disability status by reviewing medical reports and contacting doctors for updates.
  - J. Auditing and reviewing all medical bills through MedReview (OMFS/IHFS/PPO) and paying all properly adjusted medical bills in a timely and accurate manner.
  - K. Paying mileage or medical reimbursements to injured workers.
  - L. Paying temporary disability compensation when appropriate to do so or advising the City of the need to adjust payroll records when salary continuation is applicable.
  - M. Arranging medical exams in conformance with State law to determine whether an injured worker's medical condition is permanent and stationary (reached Maximum Medical Improvement/MMI) and what, if any, permanent disability exists.
  - N. Paying the permanent disability compensation in accordance with the law.
  - O. Arranging for attorney representation of the City whenever the need arises.
  - P. Monitoring attorneys and assisting them in preparing cases.
  - Q. Auditing and paying legal expenses.
  - R. Arranging for vocational rehabilitation services when appropriate, monitoring vocational rehabilitation consultants and assisting them as necessary.
  - S. Auditing and paying vocational rehabilitation expenses.
  - T. Preparing and issuing Supplemental Job Displacement Benefits (SJDB) notices and benefits.
  - U. Preparing and issuing the permanent disability compensation notices.
  - V. Pursuing subrogation when there is a viable third party.
  - W. Notifying the City and excess insurers of all claims which exceed or may exceed the self-insurance retention; maintaining a liaison between the City and their excess insurers on matters affecting the handling of such claims and arranging for reimbursement to the City of losses in excess of its self-insurance retention.
  - X. Obtaining settlement authority and negotiating settlement on appropriate claims.
  - Y. Attending all hearings that are required by law.
  - Z. Closing claim files when appropriate to do so.
6. **CHECKING ACCOUNT:** The City and the Contractor agree that:
- A. The City shall establish and maintain a checking account from which all Workers' Compensation benefits and expenses are to be paid.
  - B. The Contractor shall prepare checks and issue those checks directly to payees without delay.
  - C. The Contractor shall sign checks with a facsimile signature or manually.

## Attachment B – Exhibit 1

- D. The Contractor shall secure checks in a locked area accessible to a limited number of personnel.
  - E. The City shall maintain an adequate balance in their checking account to meet all Workers' Compensation obligations without delay.
  - F. The checking account may be used to pay penalties in which case the Contractor shall reimburse the City within fifteen (15) working days for any amount of the penalty which the Contractor caused.
7. **ELECTRONIC DATA PROCESSING:** The Contractor shall provide the City with electronic data processing services that will allow for the production of loss experience and transaction reports within ten (10) days following the close of each calendar month. The Contractor will also work with the City to develop ad hoc and other specialized reports as requested.
8. **REGULATORY REPORTING:** The Contractor shall prepare all reports required by State and Federal regulatory agencies (if any) in connection with the Program, including the Self-Insurer's Annual Report required by the Department of Self-Insurance Plans.
9. **RECORDS:** The Contractor shall establish and maintain electronic claim files, claim logs, transaction documents and all other records associated with the Program. These record

## Attachment B – Exhibit 1

shall be the property of the City. Unless this Agreement is cancelled, closed hard files, if any, shall be stored by the Contractor for five (5) years and shall thereafter become the responsibility of the City. Upon cancellation of this Agreement, the City shall be responsible for maintaining and storing all data, records, et cetera. The Contractor shall not dispose of or destroy hard files without the prior, written authorization of the City.

10. **OBLIGATIONS OF THE CITY:**

The City shall perform the following:

- A. Submit all reports of work injury to the Contractor in a timely manner not to exceed two business days of the City's knowledge of the injury.
- B. Respond to the Contractor's requests for information and authority within five days of such requests.
- C. Provide information that is accurate and is in a form specified by the Contractor.
- D. Grant settlement authority to the Contractor in advance of WCAB, Rehabilitation, and legal hearings, or be available by phone or in person during same.